IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

M/s.Asuji Bharat Kumar V/s. Shantilal & Ors.

S.B.CIVIL SECOND APPEAL No.101 of 2005

Date of judgment : 09 October,2006

PRESENT
HON'BLE SHRI N P GUPTA,J.

Mr. R.R.Nagori, for the appellants.
Mr. R.K.Thanvi, for the respondents.

BY THE COURT:
REPORTABLE

This appeal has been filed by the defendant, against the decree for eviction, passed by both the learned Courts below, on the ground of reasonable and bonafide necessity of the plaintiff, and by also deciding the question of comparative hardship and partial eviction, and subletting, against the appellant.

The facts of the case are, that a suit for eviction has been filed on 22.5.85, by the three plaintiffs, being the heirs of Banshilal, i.e. his widow Radhabai, son Shantilal, and widowed daughter Shushila, alleging inter-alia, that the property described in para-1 of the plaint, being a Nohra including a shop, was let out

to the defendant No.1 (M/s.Ashuji Kewalchand) by the deceased landlord Banshilal and plaintiff No.2 Shantilal, on 11.2.63, at a monthly rent of Rs.42/-, the month of the tenancy was on the basis of Hindi Miti, rent note was executed on 14.6.63. Then in Samvat Year 2030 a shop was constructed, therefore, the premises comprised of Nohra and shop, and since then the rent was increased to Rs.100/-. It was alleged, that since Banshilal has expired, his heirs being his widow, son and daughter have been impleaded as heirs. It was then alleged, that the defendant has neither tendered nor paid rent after Baisakh Vad Amavas Samvat 2037. Thus, 49 months' rent had fallen into arrear, and the defendant has become defaulter. Then the plaintiff pleaded the premises to be reasonably and bonafide required by the plaintiff No.2, pleading that presently the plaintiff No.2 is sitting on his nephew's (Bhanja) shop. It was pleaded, that firstly that shop does not belong to Shantilal, secondly Shantilal had five nephews who require the shop for carrying on their business, and they want to evict Shantilal. Apart from all this, Shantilal needs a bigger premises, as he has one wife, four sons and two daughters, and apart from that, he would manufacture gold and silver ornament, refine the metal, and for that he would install machinery, and thus he needs a big Nohra. It was alleged, that the machines are presently installed at different place in Bhanwarlal Banshilal's shop, and he requires a shop for selling the prepared goods, and thus he requires

the entire premises. It was pleaded that presently the refining work is required to be got done by the plaintiff from other persons. It was also pleaded that the defendant does not require the shop, as defendant no.1 has closed his business, and has further let out the premises to defendant no.2 (M/s. Asuji Bharatkumar), and the grain business has been shifted to Krishi Upaj Mandi, and consequently the defendant no.1 has shifted there, where he has a godown of much bigger size, and a shop, apart from the fact, that the defendant no.1 has various other big plots, in Nehru Nagar, Mahavir Nagar, and Dhanmandi Scheme, Pali. It was also alleged that the defendant no. 1 has also purchased a shop near the disputed property, and if desires, it can get many other accommodation. It was also pleaded, that the defendant no.1 has started textile business (trading in vials) in the name and style of Kumod Trading; at different place. Thus, he does not need the premises, and thus the comparative hardship is in favour of the plaintiff. It was then alleged, that the firm Ashuji Kewalchand has been closed some 5-6 years ago, and thus the defendant no.1 does not need the shop. That apart Sohanraj, who was a partner in the said firm, and had purchased stamp, he and his other partner Mishrilal, have started separate business, in the name and style of Mishrimal Kewalchand, in godown no. 9 in Krishi Upaj Mandi, which is much bigger than the suit property, and is in the name of Mishrimal, and Sohanraj has another godown no. 50 in his name. Thus both the partners

are carrying on independent business, and have much bigger sized godown. The plaintiff then alleged, that the defendant no.1 has handed over the premises to defendant no.2, therefore also he is liable to eviction. Interalia with these pleadings prayer for eviction was made.

The defendants filed a joint written statement on 27.1.1986, contending interalia, that the defendant no. 1 partnership firm is in existence since much before taking the premises on rent, whose partners were Mishrimal and Sohanraj, and they continued to be partner till dissolution of the firm, which was dissolved on 22.10.1979. It was admitted, that the premises was taken on rent by defendant no.1, as alleged. It was denied that the tenancy was according to Hindi month. Then, it was also denied, that the plaintiff constructed shop in the Nohra, or that therefore rent was increased to Rs. 100/-. It was pleaded that the shop existed at the time of initial commencement of the tenancy, and tenancy included the shop. Of course, rent was increased in 2030, but it was on the threat of forcible dispossession. It was pleaded that the rent was paid up to Baisakh Vadi Amavas 2037, by Sohanraj, in the capacity of firm Asuji Bharatkumar (defendant no.2), but in the rent note, the entry made regarding payment of rent was tampered with, and the name of Asuji Bharatkumar has been erased, and that, thereafter the rent was tendered but the plaintiff did not receive, on the ground, that he wanted to

enhance the rent to Rs. 200/-, so much so that on the defendant declining to increase the rent, the plaintiff destroyed the rent note. It is pleaded that one of the partner Mishrimal separated, and Sohanraj continued to be tenant, and is continuing till the date. Rent was sent by money order, which also, the plaintiff declined to receive. Then, notice was given, but that was also not responded. Thus, the defendant is not a defaulter. It was pleaded that the plaintiff does not require the suit premises. The plaintiffs simply want to enhance the rent. The allegation of plaintiff sitting in nephew's shop was denied. The plaintiff's having five nephews, and their intending to establish separate business was also denied. It was pleaded that Shantilal is carrying on business comfortably and peacefully in his family premises, and has big residential apartment, where also business can be carried. Thus, the requirement was denied. It was pleaded that the job of refining metal is done by Niargars and not by goldsmith. It was pleaded that Sohanraj requires the premises, and is carrying on grain business, Sohanraj is continuing in possession as tenant, and is carrying on business in the name and style of Asuji Bharatkumar, and thus Asuji Bharatkumar is not a subtenant, rather it is a partnership firm, wherein apart from Sohanraj his son Rameshchandra is partner. It was also denied that grain business is also shifted to Krishi Upaj Mandi, rather the grain business is carried on in Rui Katla and Dhanmandi which adjoin each

other. It was pleaded that defendant no. 1 has no godown or shop in Krishi Upaj Mandi, nor does it have any plot in Nehru Nagar, Mahavir Nagar, or Dhanmandi Scheme, nor has he purchased any shop near the suit premises, nor does he carry on any business in the name of Kumod Trading Co., and that if he is evicted, he would suffer great hardship, as his business would be closed, and outstanding would become bad debts. Denying the averment of subletting, it was pleaded, that since dissolution, original tenant Sohanraj is continuing in possession and carrying on business, even after dissolution, in the name and style of M/s. Asuji Bharatkumar, wherein apart from himself, his son Rameshchandra has been taken as a partner, who lives with Sohanraj.

After filing of the suit, the plaintiff filed an application on 25.9.1987, seeking to add a ground of material alteration, alleging that the defendant has covered the Nohra with iron sheets, as a result of which the light and air of open Chowk has been closed. This application for amendment was allowed vide order dt. 16.12.1987, being subsequent event, as this was alleged to have been done during pendency of the suit. The plaintiff accordingly filed amended plaint on 22.12.87, and added para 5A, alleging that on 10.9.87 the defendant has made above material alteration.

The defendant thereafter filed an amended written statement on 10.7.88, wherein this para 5A was denied as after thought. It was contended that tin shed existed since much before commencement of the tenancy, and he has not done any material alteration.

The learned trial court framed 12 issues. However issues no. 8 and 9 were subsequently not pressed. Issue no. 1 related to defendant no.1 being defaulter. Issue no. 2 related to plaintiff's reasonable and bonafide necessity, issue no. 3 related to comparative hardship, then issue no. 4 comprehended the question as to whether the defendant has additional premises, on which ground he is liable to be evicted: however, this issue was not pressed by the plaintiff. Then, issue no. 5 related to ground of subletting. Issue no. 6 related to material alteration. Issue no. 7 related to plaintiff's entitlement to Rs. 3846/-. The other issues need not detain me.

The learned trial court decided issue no. 1 and 7 together, and it was considered, that even according to the defendant, he has paid rent upto Baisakh Vad Amavash 2037. Thereafter rent was tendered but was not received, and money order was also refused. Then, it was found that amount has not been deposited under Section 19A. Then, after considering some judgments of this Court, it was found, that since the defendant has not deposited rent

under Section 19A, nor has he given any notice to the plaintiff to inform his bank account, therefore, the defendant is defaulter, and both the issues were decided in favour of the plaintiff. Then issues no. 2 and 3 relating to bonafide necessity and comparative hardship were also decided together. While deciding these two issues, the learned trial court recapitulated the evidence of the parties, and then considered the contention of the parties, it was also considered, that the case is pending for the last 15-16 years, and during this time sons of plaintiff no.2 has also grown up. Then various judgments of this Court and Hon'ble the Supreme Court were considered, and it was found, that the plaintiff has reasonable and bonafide necessity, as his nephews want to evict him, and he has no other shop; then, the plaintiff is best judge of his requirement, as to where he wants to carry on his business. It was considered that apart from the plaintiff, he has four sons, and thus for five persons, to work, he requires the premises. Then, considering comparative hardship, it was considered, that the defendant is, after all a tenant, and he should have prepared himself mentally, that sometimes he is to vacate, and therefore, if the tenant is required to take another premises on rent, it cannot be said to be uncalled for. Interalia with these findings, the two issues were decided in favour of the plaintiff. Then, coming to issue no. 5 it was considered, that admittedly the shop was let out to defendant Asuji Kewalchand, which

comprised of two partners, Sohanraj and Mishrimal, which firm has been dissolved vide Ex.A-5, leaving partner of defendant no. 1, being Sohanraj, in his personal capacity, and thereafter he constituted another firm, being Asuji Bharatkumar, by inducting his son, and thereby he lost the right of continuing to be tenant, as it amounts to subletting. Then the contention about the defendant no.2 having paid the rent was negatived, on the ground that books of accounts of defendant no.2 were not proved, while it was proved, that rent was paid by Sohanraj in his personal account, and does not appear to have been deposited in the capacity of partner of defendant no.2. Thus the issue was decided in favour of the plaintiff. Then, issue regarding material alteration was decided against the plaintiff. In the result the suit was decreed. During pendency of the suit the plaintiff no.3 the daughter of Banshilal expired, and her legal representatives were substituted.

In appeal the findings of the learned trial court were challenged. Regarding bonafide necessity it was contended in the appeal, that a shop of plaintiff respondent Radhabai is available for business of the plaintiff, which is situated in the north of the shop of Gyan Prakash, who carries business in the name and style of Bhanwarlal Banshilal, which measures 15 x 30 ft. and this Gyan Prakash is real nephew (Bhanja) of plaintiff

Shantilal, but this aspect has not been considered by the learned trial court, and that the plaintiff is telling lie about no other shop being available. Thus, the requirement of the plaintiff is not established. Then, the other findings of subletting, and comparative hardship were also challenged. Then, it was also contended in the appeal that there is no pleading on the side of the plaintiff regarding partial eviction, and no issue has been framed, and no finding has been given, which was required to be done mandatorily, and it was also contended, that from the evidence available on record, it is clear that the premises is a big Nohra, and shop is situated in the north west corner. The learned lower Appellate Court after cataloguing the facts and framing of issues, and listing the evidence of the parties, and recapitulating, rather giving resume of the evidence of the parties, noticed the contentions of the counsel for the parties, and then proceeded to consider the matter issue wise. Deciding issue no.1 it was held, that the defendant is not a defaulter, inasmuch as, there is no requirement of law, that if the rent is tendered, and if the landlord refuses to receive it, the tenant shall be under obligation to ask for the bank account, or to deposit it under Section 19A, and thus issues no. 1 and 7 were decided in favour of the defendant. Then, deciding issue no. 5, regarding subletting, it was held, that of course Sohanraj has purchased the stamp, but there is nothing to show that the plaintiff had knowledge of dissolution, and

had treated Sohanraj alone to be the tenant, there is no pleading of acquiescence in the written statement. It was also found that if there is partnership firm, and new partners enter, it would amount to relinquishment of possession. Then, it was found, that earlier Mishrimal and Sohanraj were in joint possession as tenant. Then, it is pleaded that Sohanraj alone remained a tenant, then Sohanraj and Rameshchandra jointly became tenant, and there is no evidence about this being in the knowledge of plaintiff, but then it was pleaded that this course is permissible. It was found that if the plaintiff had come to know of this fact, and he had waived this, then such defence would have been taken, which has not been taken, rather it is established from the defendant's pleading and the documents itself, that earlier defendant no. 1 was the tenant, and now defendant no. 2 is a separate partnership firm. However, the mere fact that one partner is common, is of no consequence. Then, both the learned counsel relied upon the judgment in 1981(1) RCJ-592, which was approved by Hon'ble the Supreme Court in 1998 SCC-3214. Thus, it was found, that the issue was rightly decided in favour of the plaintiff. Then, deciding issues no.2 and 3 together, it was considered, that the learned trial court has discussed in detail, that Shantilal has to establish machinery for cutting and refining gold and silver, stretching wire, and thus four machines are required to be installed, and also to carry out goldsmith's business. Then, the contention was

considered, that this type of business is carried on in the premises measuring 10x10 ft., and therefore, partial eviction should have been ordered. As against this, the plaintiff contended, that he is the best judge of his requirement. The learned lower Appellate Court found, that plaintiff requires place for installing four machines, space to sit, and store the merchandise, and for all this, it is the plaintiff who is to decide as to how much place is required. It was contended by the plaintiff that in the present age size of jewelry shop is to be determined according to prevalent market condition, and the plaintiff cannot be compelled to carry on business in the small shop. Learned lower Appellate Court agreed with this submission. Then, regarding shop of Radhabai, it was found, that the contention is raised on the basis of the statement of Gyan Prakash, but then no documentary evidence has been produced, while the plaintiff sits along with his nephew, and the plaintiff is the best judge of his requirement. Then, availability of other premises with the defendant was highlighted, and findings of the learned trial court were upheld. Then, regarding partial eviction, it was found, that of course no issue has been framed, and no finding has been given, but then, since defendant Sohanraj has sizeable other place, and plaintiff requires to establish a new business, by commissioning machines, and establishing a shop, in such circumstances, partial eviction cannot be ordered. In addition, it was also held, that even the

defendant himself has not taken a plea about possibility of partial eviction, and while in witness box, he has specifically deposed, that partial eviction cannot be done. Then, reliance was placed on the judgments in 1984(2) RCJ-650, and 1990(2) RCR-731 wherein it was held, that even if no issue of partial eviction has been framed, and no evidence has been led, and no request was made for partial eviction, in the learned trial court, the learned lower Appellate Court need not remand the matter on this question. Thus, the issue was decided in favour of the plaintiff. Thus, the appeal was partly allowed, and while setting aside the finding on issue no.1 and 7 the decree for eviction was maintained.

Assailing the impugned judgment, learned counsel for the appellant, in the first instance, assailed the findings of the learned courts below on the question of reasonable and bonafide necessity, by contending, that the learned courts below have failed to consider, that the plaintiff has come with a deliberate false case, about not having any other premises, while Gyan Prakash, who is none else than the nephew of the plaintiff Shantilal, has clearly admitted, that one shop adjoining to his shop belongs to Radhabai, and significantly Radhabai is plaintiff no.1. Attention was also invited to Ex.A-1 dt. 4.1.91, wherein the shop was admitted to be of Radhabai by P.W.2, but while in the witness box he has tried to get out

of the situation, by deposing the shop to have been gifted to her daughter, some 8 years back, which on the face of it, could neither be believed, nor this aspect has even been considered by the learned courts below. On the other hand, learned lower Appellate Court has proceeded with the basic misconception, in expecting the defendant to produce documentary evidence, about a shop to be belonging to other plaintiff, despite having been admitted by Gyan Prakash, the plaintiff's witness, and plaintiff's nephew. Then, learned counsel also assailed the finding of the learned courts below on the question of partial eviction. Learned counsel read to me the provisions of Section 14(2) of the Rajasthan Premises (Control of Rent & Eviction) Act, hereafter referred to as the Act, and submitted, that even if there is no pleading and no evidence, still it is the duty of the Court to consider the question of partial eviction, on equitable consideration, and therefore, either the matter may be remanded back, or if the bonafide necessity is upheld, appropriate partial eviction may only be decreed, so as to leave northern western portion of the premises with the defendant, in the entire length of Nohra. Learned counsel relied upon the judgments of Hon'ble the Supreme Court, in Rahman Jeo Wangnoo Vs. Ram Chand & Ors., reported in AIR 1978 SC-413, Satwant Kaur Vs. Dhund Singh, reported in (1983) 3 SCC-638, Krishna Murari Prasad Vs. Mitar Singh, reported in 1993 Supp (1) SCC-439, Ramesh Chandra Kesherwani Vs. Dwarika Prasad reported in 2002 WLC

(SC) Civil-569, then some judgments of this Court being, in L.Rs. of Ibrahim Vs. L.Rs. of Fakruddin, reported in RLW 1997(2) Raj.-768, Riyaz Mohammad Vs. Rameshwar, reported in RLW 1989(1)-95, and Bharatpur Wholesale Sahakari Upbhokta Bhandar Ltd. Vs. Shri Sohan Lal, reported in RLW 1988(1) Raj.-262. Learned counsel also pointed out, that the two judgments rendered by this Court, in Bhanwarlal Vs. Tikam Chand, reported in 2000(4) WLC(Raj.)-408, and Anandi Lal Vs. Smt. Sarju Devi & Ors., reported in 2000(4) WLC(Raj.)-547 are clearly distinguishable on facts, and being contrary to the dictum given by Hon'ble the Supreme Court, cannot be said to be laying down correct law. It was also submitted in the alternative, that in any case, it appears that there are divergent judgments of coordinate Benches of this Court, therefore, the matter is required to be referred to larger Bench for authoritative pronouncement. Learned counsel then assailed the finding on the ground of subletting, by contending, that admittedly Sohanraj was key partner in defendant firm, and admittedly Sohanraj had purchased the stamps and executed a rent note, in such circumstances, after dissolution of the firm, when Sohanraj is continuing in possession, and simply because he had inducted his son Rameshchandra, who is also living with him, as partner, and has given the business, the shape of partnership firm, being M/s. Asuji Bharatkumar, it cannot be said that it amounts to any subletting, and the finding is required to be set aside.

On the other hand, learned counsel for the respondent supported the impugned judgments and decrees. It was contended, that the finding on the question of reasonable and bonafide necessity is a pure finding of fact, and does not require any interference. Regarding the shop of Radhabai, it was submitted that of course Gyan Prakash has admitted the shop adjoining his shop to be of Radhabai, but then there is nothing to show, that that shop is vacant, and available for being used by the plaintiff, and there is nothing to show, that the plaintiff has come with the case of bonafide requirement, being actuated by any oblique motive. In such circumstances, when the plaintiff, who is presently carrying on in his nephew's shop, who want to evict him, and the plaintiff wants to establish his independent business of larger dimension, which has been accepted by the learned courts below, it cannot be said, that the finding is vitiated on any of the ground available under Section 100 C.P.C. Then, controverting the submission about partial eviction, it was contended that no ground was raised by the appellant about partial eviction in the memo of appeal, assailing the correctness of the finding, rather all that has been contended is, that no finding is given by the learned lower Appellate Court, and the learned lower Appellate Court in para-8 of the judgment has noticed, that there is no pleading. Then, my attention was invited to para-3 of the

plaint, wherein the plaintiff had taken a specific plea about his requiring the whole premises, and in reply to this para also, it was no-where pleaded by the defendant, that his requirement can be satisfied by evicting the defendant from part of the premises. Thus, it amounts, that the defendant has abandoned this plea. Then, the learned counsel invited my attention to the statement of the plaintiff, wherein the plaintiff has clearly deposed to be requiring the entire premises, and on that aspect also there is no cross-examination whatever. Thus, this part of the evidence of the plaintiff goes un-assailed. Defendant D.W.1 Sohanraj has also appeared in the witness box, and has not stated a word, that the plaintiff's requirement can be fulfilled by part of the premises. Learned counsel relied upon judgment of this Court, in Karam Chand Vs. Ashok Kumar, reported in RLR 2000(1)-681, wherein the refusal to allow amendment in the written statement to introduce plea of partial eviction was not interfered with by this Court. Then, reliance was also placed on the judgment of this Court, in Raj Kumar Vs. Mehar Chand, reported in RLR 1990(2)-731, wherein this Court held, that not giving the finding on question of partial eviction is of no consequence, as the things are writ large. It was also contended, that the judgments in Bhanwarlal's case and Anandi Lal's case do lay down the law correctly, and are applicable on all the fours to the present case. Then, supporting the findings on the question of subletting it

was contended, that M/s. Asuji Kewalchand and M/s. Asuji Bharatkumar are two different registered partnership firms, and simply because Sohanraj is one of the common partners, it cannot be said that it does not amount to subletting.

In rejoinder learned counsel for the appellant invited my attention to page-18 ground E, and substantial question no. 4, framed in the second appeal, and submitted, that he has very much assailed the findings on the question of partial eviction.

I have considered the submissions, and have gone through the entire record, so also the judgments of the two learned courts below, and the judgments cited at the bar.

Of course, the decree for eviction has been passed on two grounds, being of subletting, and reasonable and bonafide necessity, by deciding question of comparative hardship and partial eviction, against the appellant. I would first like to deal with the ground of reasonable and bonafide necessity, along with the aspects of comparative hardship and partial eviction.

As noticed above, the case of the plaintiff in this regard is, that the premises were let out by the plaintiffs' ancestor Banshilal, and plaintiff no.2 Shantilal, and as pleaded in para-3, the premises are

required for Shantilal, as he is sitting on the shop of his nephew, he has five nephews who also require the premises for themselves, and want to evict him. Secondly Shantilal himself has big family. Thirdly, he requires the premises for refining the gold and installing machinery for that purpose, for installation of machineries and a shop as an out let for selling the produced goods. It was also pleaded that the refining work is to be got done from other persons presently. True it is that the plaintiff has not disclosed about the shop belonging to Radhabai, being Shantilal's mother, and plaintiff no.1, but then it is also true, that it has not been pleaded in the plaint, that there is no other premises available to the plaintiff, rather the plaintiff has pleaded in detail the precise requirement for the suit premises in its entirety. On the other hand, the defendant in his written statement has only pleaded, that Sohanlal does not require the premises, and the suit has been filed with a view to enhance the rent. It was denied that Sohanlal sits on the shop of his nephew, or that he has five nephews, or that they want to have separate business, rather the stand was, that the plaintiff can carry on business in his residential premises, available with him. Then, the requirement for a big premises for manufacturing ornaments, refining metal, commissioning machinery etc. was also denied, pleading that refining work is done by Niargars, and not by goldsmith. Thus, it was nowhere the case of the defendant, that the plaintiff has

other suitable premises, available at his disposal, so as not to have any requirement of the suit premises. Obviously since the plaintiff has not pleaded in the plaint, about not having any other accommodation, it cannot be said, that in view of Gyan Prakash's statement, about the shop adjoining his shop to be belonging to Radhabai, the plaintiff has not told whole truth, or has told lie. In this background, significantly, the oblique motive pleaded in the written statement being to enhance the rent, has not been suggested to the plaintiff, in cross-examination, nor anything in this regard is shown to have been deposed by the defendant D.W.1, despite the fact that the statement running into around 16 pages, and was recorded during the period, spread over from 21.4.98 to 17.8.99. In that view of the matter, when the defendant has not deposed anything about the alleged oblique motive of the plaintiff, and the plaintiff's evidence clearly deposed about plaintiff's requirement, it cannot be said, that the finding on the question of reasonable and bonafide necessity, requires any interference in this second appeal.

Now, I take up the question of partial eviction, on which, much stress was laid by the learned counsel for the appellant. Pleadings in this regard have already been recapitulated, inasmuch as, the plaintiff has clearly pleaded to be requiring entire premises, which averment about requiring the entire premises has not been

controverted. Then, in evidence P.W.1 has clearly deposed to be requiring entire premises, on which there is no cross-examination, whatever. Then, the defendant has not deposed anything in his evidence, about the requirement of the plaintiff to be capable of being satisfied by partial eviction, in any manner whatever. Then as appears from the judgment of the learned lower Appellate Court, that it was for the first time, that it was contended, that the suit premises is a very big Nohra, and the shop existed on the northern west corner. Then, in this Court, it is contended in ground (e), by disclosing, that the shop in dispute is 24 ft. wide on the road side, and 32 ft. in length, and the defendant would be satisfied, in case he is given 8ft. wide portion towards the front, and 32 ft. in length, leaving 16 x 32 ft. to be available to the plaintiff.

It is on the face of above things, available on record, that I am called upon to decide the sustainability of the finding of the learned courts below, on the question of partial eviction, and am also called upon to decide, the aspect of partial eviction, even afresh, and in that regard reference has been made to various case law, as noticed above. In that view of the matter, I stand better advised, to first consider the various cases cited at the Bar.

In Rahman’s case, Hon’ble the Supreme Court held, that proviso to explanation, appended to Section 11(h) of

the J & K. Houses and Shops Rent Control Act, mandates the Court to consider, whether eviction of tenant from part of premises is to be ordered, so as to substantially satisfy reasonable requirement of landlord. It has also been held, that even in the absence of a specific pleading, under proviso, court has to act in compliance with the mandate, and give a finding. It is a very short judgment, and arises from J & K Rent Control Law. The only ground on which the impugned judgments were assailed was, that the court of fact failed in recording a finding, as contemplated by proviso to explanation to Section 11(1)(h) of the Act. It was noticed, that the trial court and the first appellate Court have really not considered this question, on the merits; indeed evidence itself has not been taken, on the score, that there has been no specific plea in that behalf. Then, it was held, that the proviso mandates the Court to consider, whether partial eviction, as contemplated therein, should be ordered, or the entire holding should be directed to be evicted, and that this aspect, therefore, requires judicial exploration, after giving opportunity to both sides to lead evidence in this behalf, and the matter was sent back to the first appellate Court. Then, in Satwant Kaur’s case, which was from Rajasthan itself, and decided on 27.4.1983, the appeal was filed against the judgment of Rajasthan High Court dt. 22.9.1980, whereby in the suit filed by plaintiff-landlady for eviction of the entire premises in possession of the tenant-respondent, was

given only a marginal relief, by granting decree for partial eviction, and it was considered, that it is admitted position that landlady requires the shop for personal necessity, viz., to settle her son for starting motor battery business in the disputed premises, and that the plaintiff alleged that no hardship would be caused to the tenant, as he is carrying business, and has got sufficient accommodation in other places, beside the shop in question, and the High Court concluded, that it was wholly unnecessary to evict the defendant from the entire premises, and passed a decree for partial eviction of the respondent from the disputed shop measuring 14 feet x 14 feet, which is already separated by a pucca wall. The controversy raised before the Hon'ble Supreme Court was, that whether the partial eviction should be from the back portion of the shop, or from the front portion, which abuts the market road, and it was represented, that the tenant was carrying on tent business, for which he requires sufficient accommodation to store, and therefore, it was prayed, that he may be given that portion, and Hon'ble the Supreme Court upheld the findings of the High Court, whereby the landlord was given the back portion, considering the contemplated nature of the business of the plaintiff. Then, in Krishna Murari's case, it was held, that even if the premises comprises of only one room, its divisibility has to be considered. In that case the premises was a shop measuring 24' x 22', with a verandah

measuring 6’x22’, and since the landlord was not agreeable for partial eviction, the matter was sent back to the trial court, in accordance with the provisions of Section 11(1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, while so sending it was held, that as the landlord has proved the requirement of the premises for obtaining eviction of the tenant; the proviso to Section 11(1)(c) of the Act requires the court to consider where the requirement of landlord is substantially satisfied by evicting the tenant from a part only, and allowing the tenant to continue the occupation of the rest of the premises, and the tenant agrees to such occupation, the court shall pass a decree accordingly, and fix proportionately fair rent for the portion, in occupation of the tenant. It was also held, that this aspect has been completely overlooked by the courts below, including the High Court, though the appellant tenant had indicated his agreement in this behalf, the landlord disagreed to the suggestion of dividing the premises into two equal halves for being shared between the parties. The matter was, therefore, sent back to the trial court, with a direction to examine the matter afresh, in the light of the requirement of proviso to clause (c) of sub-section (1) of Section 11 of the Act, treating the landlord’s need to be proved.

In Ramesh Chandra's case, Hon’ble the Supreme

Court has of course held that the question of partial eviction could be decided by the Appellate Court instead of remanding the matter, and has not disturbed the partial eviction, as ordered by the learned courts below, on equitable considerations. Suffice it to say that in the present case the learned lower Appellate Court has discussed the question of partial eviction, and relying upon the defendant's positive statement about his requirement to be not satisfying by the part of premises, has decided the question against the appellant. In that view of the matter, it cannot be said that the question has not been decided, and consequently, this judgment does not help the appellant. The correctness of the decision of the learned lower Appellate Court shall obviously be considered by me at appropriate place.

Then, in L.Rs. of Ibrahim’s case, the learned Single Judge of this Court held, that before passing a decree of eviction, it is mandatory to consider the possibility of partial eviction, being a condition precedent, and that this is to be done even if no issue is framed. In that case the learned lower appellate court had modified the decree, and ordered partial eviction. It was found, that the situation requires more elucidation, and therefore, the case was remanded for further evidence, and obtaining report from local commissioner. In para-7 in that case, site plans being scale plan maps were considered, and

it was found, that the existing ground floor map and proposed ground floor map cannot be reconciled by any stretch of imagination by length and breadth given by the learned lower Appellate Court. It was noticed that in the existing ground floor besides the shop marked by letter 'X' five feet space is shown, whereas in the proposed ground floor map only 3 feet 6 inches space is shown, and it was found that feasibility of partial eviction on the basis of the material available on record is not possible, unless an Advocate Commissioner is appointed to elucidate the matter in controversy, with regard to partial eviction, after local inspection, and in the light of the provisions of Section 14(2) of the Act the matter was remanded. As appears from the judgment that, that was an appeal of early 1993, being second appeal no. 5 of 1993. Then, in Riyaz Mohammad's case in the Second Appeal of 1982, it was found, that the appellant did not raise the question of partial eviction in the written statement, no issue was framed, and no evidence was adduced, still it was found, that the appellant is not precluded from raising the question, and that it was incumbent upon the court to consider the question, in view of the second paragraph of sub-section (2) of Section 14. Therefore, by framing issue, the matter was remanded back to the learned trial court. Then, in Bharatpur Wholesale Sahakari Upbhokta Bhandar Ltd's case it was held, that prior to amendment Ordinance of 1975, the Rent Control Act did not contemplate for splitting up of

the premises for the purposes of passing a decree for partial eviction, but now it contemplates, and then considering the provisions of Section 14(2) of the Act, it was considered, that though no plea of partial eviction was taken in written statement, and the point was raised for the first time in second appeal, but in view of the judgment of Hon'ble the Supreme Court in Rahman's case, and Riyaz Mohd.'s case, the matter was remanded back to the learned trial court. While in the judgments cited by the learned counsel for the respondent, in Ramkumar's case, this Court considered the possibility of partial eviction, and found it to be not possible, considering the number of apartments, and size of the family, and also considered, that even if no finding is given in this regard by the learned courts below, since the things were so apparent, the decree for eviction from entire premises was upheld. Then, in Karan Chand's case the learned trial court had declined the prayer of the defendant for amending written statement, to incorporate the plea of partial eviction, and this Court considered, that the admissions having been made by the defendant, in favour of the plaintiff, about it being not possible to divide the shop, dismissal of application was upheld.

Now, I may refer to the two judgments in Bhanwarlal's case and Anandi Lal's case. Both these judgments were rendered by me. Bhanwarlal's judgment was

rendered on 18.7.2000, in Second Appeal No. 77 of 1996, and judgment in Anandi Lal's case was rendered on 17.8.2000, in Second Appeal No. 316 of 1999. In Bhanwarlal's case, relying upon Riyaz Mohd.'s case, it was contended, that the question of partial eviction was required to be decided and for that an additional issue was required to be framed, and the matter was required to be remitted to the learned trial court, by the learned lower appellate Court. Then, the finding, as recorded by the learned lower appellate Court on the question of partial eviction, which was recorded on the basis of statement of plaintiff, were assailed, and it was contended, that even before the learned lower appellate Court no material in that regard has been placed on the side of the defendant, to show as to how partial eviction is possible. On the strength of Riaz Mohd.'s case it was contended, that the matter was required to be remitted. Considering the contention, it was held by me, that in Ram Babu Vs. Padam Chand, reported in 1989(1) RLW-372, decided on 21.1.89, this Court had considered the question, and negatived the contention of the defendant, and this Court went on examining the question of partial eviction on the basis of material on record, and negatived the possibility of partial eviction. Then, another judgment, in Narsingh Dass Vs. Jeth Mal, reported in 1988(1) RLW-555, was also considered, wherein before the learned lower appellate court, the defendant moved an application for framing issue for partial eviction, which application was dismissed, and

that order was assailed, relying upon the judgments in Riyaz Mohd.'s case. However, after relying on previous judgments of this Court, and following the judgment in Harnam Das Vs. Sanwalram, reported in 1982(2) RCR-735, the revision was dismissed, holding that requirement of framing issue for partial eviction is not required to be insisted upon, in a case of single shop, or single apartment. Then, judgment in Rajkumar Vs. Mehar Chand, reported in 1990(2) RLR-731, was considered, wherein it was held, that non giving of findings by the learned courts below on the point of partial eviction does not affect the position, where the things are so apparent, that partial eviction is not possible. Then, I also referred to yet another judgment, in Vishwapriya Nagar Vs. Immamudin, reported in 1996 DNJ (Raj.)-482, wherein the order of remand passed by the learned lower appellate court on the question of partial eviction was challenged, and relying upon a Division Bench judgment of this Court, in S.B. Civil Second Appeal No. 19 of 1992, Lal Chand Vs. Shyamlal, allowed the appeal, and set aside the order of remand, by holding, in para-5 as under:-

> "…if there is already material on record, the satisfaction of the court as required under Sub-Section 2 of Section 14 can be there and it may not be necessary to frame issue and remit record for recording evidence."

And after referring to all these judgments, in view of the

Division Bench judgment in Lal Chand’s case, it was held, that it is not open to the learned counsel for the appellant to contend, that it is necessary in all cases to frame an issue and remit the matter to the trial court, for deciding afresh, and thus the decree for eviction was upheld.

It may be noticed here that this judgment in Bhanwarlal's case has been upheld by Hon'ble the Supreme Court in Chandra Prakash Vs. Tikam Chand in Special Leave Petition (Civil) 19772 of 2000 vide order dt. 11.12.2000.

Then, in Anandi Lal’s case again, the appeal was admitted on the question, being whether in absence of there being any finding on the question of partial eviction of the shop in dispute, as envisaged under Section 14(2), both the courts below have no jurisdiction to pass the decree for eviction on the ground of reasonable and bonafide necessity. Then, after service of notice, an additional question was framed viz., as to whether in the facts and circumstances of the case, including the size and location of the shop in question, no hardship would be caused, either to the tenant, or to the landlord, by passing a decree, in respect of part of the premises in question?, and remitted the issue to the learned trial court, with a direction to return its finding, on the basis of the material, which existed on record only, but after hearing

both the parties. Pursuant to that order, the finding was returned against the tenant. After receipt of that finding the matter was heard, and the contention was raised, that since the question of determination of partial eviction requires evidence, the matter should be remanded back to the learned court below, with opportunity to the parties to lead evidence, and thereafter the question should be decided. Reliance was placed on the judgment in Rahman's case, L.Rs. of Ibrahim's case, Bharatpur Wholesale Sahakari Uphbhokta Bhandar Ltd.'s case. On the other hand learned counsel for the plaintiff relied upon Hanuman Das's case, and after considering all these judgments, it was held in para-13 as under:-

> "13. In my humble view the question as to when, and in what circumstances, the matter should be remitted back for deciding the question of partial eviction has different facets, and it is to be seen as to whether it is always a 'rule of thumb' that wherever and whenever there is no pleading of either of the parties nor any evidence has been led by either of the parties and no submissions are made by either of the parties still in the event of suit being decreed on the ground of reasonable and bonafide necessity the tenant should always be free to force High Court to remit the matter to the trial court or lower appellate court, to give the parties opportunity of leading evidence and for a fresh decision."

Then, the judgment in Vishwapriya Nagar's case was considered in para-14, and in para-15 it was held as under:-

> "15. Thus according to this judgment this much is clear that if there is material on record, the satisfaction of the Court as required by Section 14(2) can be there and it may not be necessary to frame the issue and remit record for recording evidence."

Then, I referred to recent judgment of this Court, in Purshottam Lal Vs. Gangadas, reported in 1998 WLC(Raj.) UC-92, wherein while remanding the matter to the learned lower appellate court, it was directed to consider the evidence on record, and apply mind to the aspect of partial eviction, and if the court finds, on the evidence on record, that partial eviction will satisfy the need of the landlord, it shall grant relief accordingly. Thus opportunity of oral evidence was not given. Then, judgment, in Girdharilal Vs. Smt. Kanta, reported in 2000(1) RLW-306, was considered, wherein learned Single Judge of this Court, considering Rahman's case, himself went into the matter, holding, that undoubtedly, even in absence of specific pleading, court has to act in compliance of the mandate, and give a finding, and in that case the matter was considered, and it was held, that the landlord is the best judge of his requirement, and if landlord desires to beneficially enjoy his own property, his requirement cannot be termed as unreasonable, and it was further held, that non-giving of any finding by the courts below, on the question of partial eviction, does not affect the root of the matter, as in the facts and circumstances of the case,

the partial eviction was not possible. Then, in para-17 it was observed, that on a close scrutiny of record, I am able to come to the conclusion, that it is not a case where no hardship would be caused, either to the tenant, or to the landlord, by passing a decree in respect of part of the premises only. Then larger question is of finding out the proper solution, of the prevalent affairs of litigation, off and on, giving rise to such situation was considered, and in para-19, 20 and 21 it was held as under:-

> "19. It need not be over stressed that the rent control legislation is enacted for ameliorating the conditions of the tenants by protecting them against frivolous evictions, on account of prevalent housing accommodation problem. But then, it is not required to be stretched to the extent of proving counter productive, by interpreting it in such a manner as to arm unscrupulous obstructionist tenants with an unending armory to go on harassing even the genuine landlord endlessly. Section 13 of the Act provided special protection to the tenants by making it obligatory for the landlord to make out one or more of the grounds mentioned in clause (a) to (l) of sub-Sec.1 of Sec.13 as a sine qua non for being entitled to evict the tenant notwithstanding any law or contract. Then, came the amendment on 29.9.1975 putting still additional fetters on this right of the landlord, inasmuch as in cases of eviction being sought on the ground set forth in Sec.13 (1) (b), the Court was additionally required to be satisfied that after taking all the facts and circumstances into consideration, it is reasonable to allow such eviction. Likewise, in cases of decree being sought on the ground set forth in Sec.13(1)(h), two requirements were enacted, one being known as 'comparative hardship' and the other, commonly known as 'partial eviction' as mentioned above, and the third being that where the premises are let out for business purposes no suit shall lie before expiry of five years from the date the premises

were let out to the tenant.

20. There was a long drawn debate in various judgments of this Court on the question as to whether these additional fetters enacted in Sec.14 are retrospective or prospective, in the sense that they apply to the pending suits or pending appeals etc. or not? and ultimately, the position settled in favour of the tenant by deciding that they are retrospective. Here I am not on the question whether they are retrospective or prospective, but this resume, I have given for the purpose of deciding the precise question about the requirement of framing additional issue and its remittance to the court below for decision after recording evidence?

21. Before proceeding ahead, I make myself clear that I should not be understood to mean not to follow the judgments of the Hon'ble Supreme Court, referred to above, or to even observe much less find anything, which may not be in line with those judgments. I am simply trying to understand as to whether those judgments do mean to lay it down as a 'rule of thumb' that irrespective of any fact and circumstances, in every case wherever the parties may not have taken any pleading or may not have led any evidence, and may not even invite the attention of the two courts below, in the appeal of the tenant, always an additional issue is required to be framed and over and above all that the defendant should be given an opportunity to lead evidence for deciding that issue."

Then, in para 23 and 24 the aspect of permissibility of splitting of the premises, or splitting of the unit, was considered, inasmuch as in S. Sanyal Vs. Gian Chand, reported in AIR 1968 SC-438, on the consideration of possibility of splitting, the dismissal of suit was restored. Then I referred to yet another judgment, in Habibunnisa Begum Vs. G.Doraikannu Chettiar, reported in JT 1999(9) SC-286, on the aspect of splitting up of the

tenancy. Then, in para-26, the object of Section 14(2) of the Act was considered, by giving an illustration of possible consequences, in absence of the provision of Section 14(2), and it was held, that Section 14(2) is required to be read and understood in the light of the law, as propounded by Hon'ble the Supreme Court in S. Sanyal's case and Habibunnisa's case, in a reasonable and rational manner, and then in para-28 it was held, that the real object of enactment would be achieved, being of protecting avoidable eviction of the tenant, from the entire premises, and also satisfying the needs of the landlord, by evicting the tenant from the part of the premises only, viz. in a manner, so as to proceed free from the fetters of indivisibility of the contract of letting. It was held, that the landlord is best judge of his requirement, and once he establishes his requirement, and court finds the requirement to be reasonable, as well as bonafide, he is, thereafter not to be subjected to any further rationing, under the garb of provisions of Section 14(2), 'partial eviction', simply because, somehow the tenant is continuing there, even at the cost of seeing, that the plaintiff is simply able to survive, by compressing his proved reasonable and bonafide requirement. It was held, that if considered from the stand point of the contract of tenancy being permitted to be divisible, by virtue of Section 14 (2), the landlord's proved requirement can be satisfied, without making him to suffer any hardship, by passing a

decree for partial eviction, or may be circumstances like the one illustrated in para-24, where no hardship would be caused to the tenant, by ordering partial eviction, the Court is to divide, or break, the contract of letting, and pass a decree in respect of such part only. It was further held, that the provision is not required to be stretched to an extent, which may look unreasonable, if not yield absurd results, and in any case, which may unimaginably increase the miseries of the landlord. It is to be grasped, that to appreciate the requirement of the landlord, so also of the hardship of the tenant, a reasonable, and most practicable view is required to be taken, if the judicial system means to maintain public faith in the Justice Delivery System. Then, Rahman's case was followed, holding that it is obligatory on the court to decide the question of comparative hardship, it is also obligatory on the courts to decide the question, irrespective of the fact, as to whether the parties took any pleading in this regard or not, and it was added, irrespective of the fact as to whether the parties led any evidence in this regard or not, and the Court was expected to place itself in the arm chair of the landlord as well as in that of the tenant, and decide, as to whether, for the requirement of the landlord, as proved by him, and found by the court to be reasonable and bonafide, the Court should venture to break the contract of letting, or should maintain the indivisibility, and thus should see, as to whether ordering partial

eviction would not cause any hardship, to either of the parties. Then only it should order partial eviction, otherwise the decree for eviction for entire premises is to be passed. This was one aspect of the matter. The other aspect of the matter was considered in para-30. It was held as under:-

> "30. There is yet another aspect of the matter viz. that the provision of Section 14 were added way back in the year 1975 and obviously when it was interpreted to be retrospective, it had to be assumed that the parties could not, and did not, either take pleadings, or lead evidence, or bring material on record to enable the court to decide the question of partial eviction. In my feeling it is more likely that the two cases decided by Hon'ble the Supreme Court being Rahman Jeo Wangnoo Vs. Ram Chand & Ors. (supra) and Krishan Murari Prasad Vs. Mitra Sen (supra) also appear to be the out come of this very situation, inasmuch as Rahman's case was decided by Hon'ble the Supreme Court on 7.12.1977. The appeal filed before Hon'ble the Supreme Court was barred by time which delay was condoned and as found above the parties had litigated in that case in the three courts below being the trial court, the first appellate court and the High Court. The legislation in that case is of the year 1966. Likewise in Krishan Murari's case the appeal was decided by Hon'ble Supreme Court on 15.1.1992. There also the matter was litigated out in the courts below and the legislation in that case was of the year 1982.... "

In Anandi Lal's case the suit was filed on 31.5.1984 i.e. around nine years after commencement of the legislation, by which time enough law, including judgment of Hon'ble the Supreme Court in Rahman's case, were very much available, while in the present case, the suit has

been filed even later, in the year 1985, and the plaintiff, as noticed above, had categorically taken stand about requiring entire premises, which stand was not controverted, the plaintiff led positive evidence about his requirement to be not capable of being satisfied by part of the premises, on which he was not cross-examined, and thus it is not a case, where there is no material available on record.

The present suit was filed, as noticed above, after about 10 years of commencement of legislation, and by this time sufficient law had already developed, notwithstanding that the defendant did not choose to lead evidence in this regard, that the plaintiff's requirement can be satisfied by his eviction from a part of the premises only. On the other hand, when the defendant was pointedly put, he has chosen to depose in cross examination, continued on 3.11.1998, at page-4 as under:-

> "इस परिसर मे से कुछ हिस्सा खाली करवाये तो यह बाद की बात है। अभी मुझे खाली नहीं करना है। बाकी के हिस्से से मेरे काम नही चलता।"

Thus, on the other hand, there is positive evidence on the side of both the parties, that partial eviction is not possible. In my view, all that has been stated, at best, in the judgment cited by the learned

counsel for the appellant, that even in absence of pleading, or issue, it is mandatory, that court should decide the question, and the question can be allowed to be raised, even for the first time, in second appeal. As against this, in the present case, as noticed above, there is positive evidence of the parties, that partial eviction is not possible. Then, coming to the question of consideration by the learned courts below, the learned trial court, of course, has not considered this aspect. However, learned lower Appellate Court, in para-25, has positively considered this aspect of the matter, and has considered the submission of the defendant himself, as noticed above, and the question has been decided in favour of the plaintiff. Of course, learned lower Appellate court had made certain observations in para-24, which were assailed to have been made loosely, but then even ignoring those observations, after re-appreciating the entire evidence of the parties, in my view, it is clear, that the plaintiff requires the entire premises, for setting up his business, by commissioning various machines, manufacturing the jewelry, and for selling it. He has also clearly established, to be having big family, comprising of himself, four sons, and mother.

At this place I may also notice that there is a world of difference between the language of the statutes of different states. Rahman's case originates from J. And K.

Houses and Shops Rent Control Act. Likewise the case in Krishna Murari's case arises from Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. The proviso to clause (c) of sub-section (1) of Section 11 of the Bihar Act lays down that where the court thinks that the landlord's reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only and allowing the tenant to continue the occupation of the rest of the premises and the tenant agrees to such occupation, the court shall pass a decree accordingly and fix proportionately fair rent for the portion in occupation of the tenant. The provision of Bihar Act in regard to partial eviction is practically parimateria to the statute of J. and K. Act being proviso to section 11(1)(h), which provides as under:-

> "Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the house or shop and allowing the tenant to continue occupation of the rest, and the tenant agrees to such occupation, the Court shall pass a decree accordingly."

As against this the language of the Rajasthan Statute is materially different, inasmuch as, the language of section 14(2) of Rajasthan Statute is as under:-

> "...Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect

> of a part of the premises, the court shall pass the decree in respect of such part only."

Thus a bare reading of the different provisions does show that in case of statutes of Bihar and J.& K. What is required to be considered by the Court is that the reasonable requirement of the plaintiff would be substantially satisfied by evicting the tenant from a part of the premises only which is not the provision in the Rajasthan Act. In the Rajasthan Act, the only consideration is that the Court is only to see that no hardship would be caused either to the tenant or to the landlord by passing a decree in respect of part of the premises. Thus, the parameters of consideration of the question of partial eviction under the Rajasthan Act cannot be the same as are contained in Bihar Act and J.& K. Act. In the present case obviously, as found above, since the landlord requires the entire premises and the defendant also admits that he cannot carry on in the remaining part of the premises, it is clear that, on the other hand, hardship would be caused to both the parties in the event of any partial eviction being decreed.

Thus, even after re-appreciating the entire material on record, in my view, in the present case, partial eviction is not required to be ordered, and the plaintiff is entitled to evict the defendant from the

entire premises, on the ground of his reasonable and bonafide necessity.

Dealing with the argument of the learned counsel for the appellant, that there are contradictory judgments of coordinate benches of this Court, in respect of question of requirement to decide the question of partial eviction, and the matter being required to be referred to larger Bench, in my view, this argument also does not hold good, as noticed in Bhanwarlal's case, in Lal Chand's case, the Division Bench held, that if there is already material on record, the satisfaction of the court, as required by Section 14(2) can be there, and it may not be necessary to frame issue, and remit record, for recording evidence. In that view of the matter, on the face of this Division Bench judgment, it cannot be said, that the matter requires to be referred to larger Bench.

Since I have upheld the finding of the learned courts below on the question of reasonable and bonafide necessity, and partial eviction, and since nothing was submitted on comparative hardship, finding in that regard also does not require any interference, and since the appeal is at admission stage, the question of subletting remains only academic, as the decision of that question, either ways does not affect the impugned decree for eviction from the premises, and therefore, I do not stand

advised to decide the question of subletting.

The appeal thus does not involve any substantial question of law. The same is, therefore, dismissed summarily.

At the request of the learned counsel for the appellant, the appellant is given one year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Sushil/